



## FOR CLERK USE ONLY

City Council

Item No.

11

# CITY COUNCIL AGENDA FACT SHEET

Community Development

Department

August 3, 2010

Requested Date

## 1. Request:

Council Approval

☒Information Only/  
Presentation☐

Other (specify)

☐

Hearing

☐

## 2. Requested Action:

An Ordinance extending a Moratorium on adult entertainment establishments.

## 3. Fiscal Impact:

Revenue:

Increase

☐

Source:

Decrease

☐

Amount:

Cost:

Increase

☐

Source:

Decrease

☐

Amount:

\$Unknown at this time.

Does Not Apply

☒

## 4. Reviewed By:

Finance Dept. on

By:

Comments:

City Attorney on

By:

Comments:

*Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.*

## CLERK USE ONLY:

CITY COUNCIL DATE:

Action

☐

Filing

☐

Consent

☐

Presentation

☐

Hearing

☐

Other(specify)

☐

Reviewed by: City Clerk

City Manager

Date

Date

# **CITY COUNCIL AGENDA REPORT**

## **SUBJECT: AN ORDINANCE EXTENDING A MORATORIUM ON ADULT ENTERTAINMENT ESTABLISHMENTS**

**AGENDA DATE:** August 3, 2010

**PREPARED BY:** Armando G. Villa, Assistant City Manager  
Jennifer Lyon, City Attorney



**RECOMMENDATION:** Accept this report and adopt the ordinance.

**FISCAL IMPACT:** None.

### **BACKGROUND INFORMATION: (Prior action/information):**

The City of Calexico has few laws regulating where adult entertainment establishments can be located and how they can operate. These rules say that adult entertainment establishments cannot be within 200 feet of a residential zone, or within 500 feet of another adult entertainment business, a religious institution, a school, or a park. The rules also state that these businesses cannot operate between 2:00-6:00 a.m.

Court decisions allow cities to regulate these businesses to prevent side effects commonly associated with them, like prostitution, organized crime, and urban blight.

In order to give City staff adequate time to evaluate proper regulation and zoning options for adult entertainment businesses to address these secondary effects, the City Council at its July 2, 2010 special meeting approved a 45-day initial moratorium on new licenses and permits for adult entertainment businesses. Government Code section 65858 authorizes the Council to extend this moratorium by an additional 10 months and 15 days if the initial 45-day study period was insufficient.

In order to extend the moratorium, Government Code section 65858 requires the City Council to adopt a report describing what steps have been taken to create adequate regulations.

### **DISCUSSION (Current consideration):**

City staff has not had sufficient time during the initial 45-day moratorium to develop and present to Council appropriate adult entertainment business regulations because excessive workloads dealing with union negotiations and budget sessions and staff shortages have prevented staff to begin the research and analysis study necessary to evaluate the adequacy of existing and future regulations. Staff needs additional time in order to prepare and present these regulations to the Council. It is requested that City Council grant staff additional time to prepare these regulations.

Attachments: Ordinance

**ORDINANCE NO. 2010-\_\_\_\_\_**

**AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF CALEXICO ADOPTING AN URGENCY MEASURE  
EXTENDING A MORATORIUM PROHIBITING NEW OR  
RELOCATED ADULT ENTERTAINMENT BUSINESSES  
DURING A SPECIAL STUDY PERIOD FOR AN ADDITIONAL  
10 MONTHS AND 15 DAYS**

**WHEREAS**, the City of Calexico currently regulates adult entertainment establishments in order to prevent deleterious and unlawful secondary effects, such as prostitution, organized crime, and urban blight; and

**WHEREAS**, the current Ordinance does not adequately reflect the goals and objectives of the City Council in preventing deleterious secondary hazards of adult entertainment establishments, like prostitution, organized crime, and urban blight; and

**WHEREAS**, failing to modify the current, insufficient regulations of adult entertainment establishments will pose an imminent threat to public health and safety by making it too easy for these businesses to become established and lead to prostitution, organized crime, and urban blight; and

**WHEREAS**, while enhancing regulation of adult entertainment establishments, it is the intention of the City Council to do so while protecting freedom of speech guaranteed by the Federal and State Constitutions; and

**WHEREAS**, a moratorium on new and different locations for adult entertainment businesses in the City of Calexico is necessary to give City Staff the opportunity to best evaluate how these businesses can be regulated to both accommodate free speech and protect businesses' and individuals' right to freedom of speech; and

**WHEREAS**, it appears that there are efforts underway for an adult entertainment establishment to either open or relocate within the City of Calexico; and

**WHEREAS**, allowing adult entertainment businesses to open or relocate within the City of Calexico without adequate regulation will pose an imminent threat to public health, safety, and welfare, based on the secondary effects like prostitution, organized crime, and urban blight so commonly associated with these businesses; and

**WHEREAS**, the City Council had adopted an initial 45-day moratorium on new licenses and permits for these establishments; and

**WHEREAS**, the initial 45-day moratorium was insufficient for City staff to draft an adequate ordinance to regulate adult entertainment establishments.

**NOW, THEREFORE,** the City Council of the City of Calexico does hereby ordain as follows:

**SECTION 1. Findings and Determination.** The City Council ("Council") of the City of Calexico ("City") does hereby find and determine that:

- (a) The City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote, preserve and protect the public health, safety, and general welfare of its citizens; and
- (b) There is concern over the proliferation or relocation of adult entertainment establishments in the City of Calexico, the lack of an adequate regulatory framework to provide oversight to these businesses, and the associated burden on local law enforcement, and the secondary effects associated with adult entertainment establishments run with inadequate regulation; and
- (c) There is concern that the City's existing land use and zoning regulations do not explain with sufficient clarity how they control the location and operation of adult entertainment establishments and as a consequence do not adequately protect the health, safety, and general welfare of the citizens of Calexico from the actual and potential impacts arising from those establishments; and
- (d) The Council wishes to study the potential options and effects of zoning and regulating the operation of adult entertainment establishments, considering available options for determining appropriate location and operating requirements and considering how such businesses could pay the revenue necessary to address unintended or secondary consequences of their operation within the city limits; and
- (e) The Council has determined that there is a current and immediate threat to the public health, safety, or general welfare of the City's citizens in allowing inadequately regulated adult entertainment establishments to obtain licenses and operate within the City and that granting permits to such establishments would result in a threat to public safety, health, and general welfare during the term of the study of additional regulations of medical marijuana dispensaries; and
- (f) The 45-day initial moratorium procedure authorized by Government Code section 65858 was insufficient time for the necessary study of the effects of regulating adult entertainment establishments on the City and of proposed regulatory measures, and therefore extending a moratorium in order to provide time for study and review of the issues is required. The City Council needs additional time to consider potential options for

regulating adult entertainment establishments either by the Council or by voters.

**SECTION 2. Emergency Measures.**

- (a) No business licenses, use permits, or zoning approvals for any new or relocated Adult Entertainment Establishment within the City shall be approved, authorized, or granted, until such time as the City Council of the City of Calxico has conducted an appropriate study of the effect of Adult Entertainment Establishments on the character of the City and the effect they may have on property values, density, and effective utilization of property in Calxico, and the legality and wisdom of various regulatory approaches toward Adult Entertainment Establishments, which study is intended to occur within a reasonable time.
  - (1) "Adult Entertainment Establishment" includes any business that is characterized by an emphasis on depicting, describing, or showing specified sexual activities, or specified anatomical areas.
  - (2) "Specified sexual activities" means and includes the fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts; sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; masturbation, actual or simulated; or excretory functions as part of or in connection with any of the activities set forth above.
  - (3) "Specified anatomical areas" means and includes less than completely and opaquely covered human genitals, pubic region, buttocks, anus, female breasts below a point immediately above the top of the areola, or human male genitals in a discernible turgid state, even if completely and opaquely covered.
  - (4) "Distinguished or Characterized by an Emphasis Upon" means the dominant or principal theme of the object described by such phrase.
- (b) Applications that have been submitted to the City but are not deemed complete as of the effective date of this Interim Ordinance shall be subject to this Interim Ordinance.

**SECTION 3. Acceptance of Staff Report.** The City Council accepts the staff report accompanying this Ordinance, which documents the steps taken by City staff during the initial 45-day moratorium to determine appropriate regulation for adult entertainment businesses.

**SECTION 4. Severability.** The City Council of the City of Calexico hereby declares that should any section, paragraph, sentence, phrase, term, or word of this Interim Ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Interim Ordinance irrespective of any such portion declared invalid.

**SECTION 5. Effective Date; Expiration; Extension.** Pursuant to Government Code Section 65858, this interim ordinance is an urgency measure of the City Council of the City of Calexico and shall take effect immediately upon passage. This Interim Ordinance shall remain in force and effect for a period of ten (10) months and fifteen (15) days from the expiration of the initial 45-day moratorium adopted on July 2, 2010 as Ordinance 1118, and shall, thereafter, expire unless and until the City Council has extended this Interim Ordinance by a four-fifths (4/5) vote of the City Council prior to its expiration, all in accordance with Section 65858. The immediate effective date of this Interim Ordinance is necessary to preserve and protect the public health, safety, and welfare of the residents of the City of Calexico.

**PASSED, ADOPTED, AND APPROVED** by the City Council of the City of Calexico at the regular meeting this 3rd day of August, 2010.

CITY OF CALEXICO CITY COUNCIL

\_\_\_\_\_  
John Moreno, Mayor

\_\_\_\_\_  
Lourdes Cordova City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer M. Lyon, City Attorney

STATE OF CALIFORNIA    )  
CITY OF CALEXICO        ) SS.  
COUNTY OF IMPERIAL    )

I, Lourdes Cordova, City Clerk of the City of Calexico, and ex-officio Clerk of the City Council do hereby certify under the penalty of perjury, that the foregoing urgency Ordinance No. \_\_\_\_\_ was adopted by the City Council at a meeting of said City Council held on the 3rd day of August, 2010, and that it was so adopted by the following vote:

ROLL CALL:           AYES:  
                          NOES:  
                          ABSENT:  
                          ABSTAIN:

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Lourdes Cordova, City Clerk